

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Oct 23, 2023**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ALIDA C.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY ADMINISTRATION,  
Defendant.

No. 4:23-CV-05060-SAB

**ORDER AFFIRMING THE  
DECISION OF COMMISSIONER**

Plaintiff brings this action seeking judicial review of the Commissioner of Social Security's final decision denying her application for social security benefits. Plaintiff is represented by Chad L. Hatfield. The Commissioner is represented by David Burdett, L. Jamala Edwards, and Brian M. Donovan. Pending before the Court are Plaintiff's Opening Brief, ECF No. 9, the Commissioner's Brief, ECF No. 11, and Plaintiff's Reply Brief, ECF No. 12.

After reviewing the administrative record, briefs filed by the parties, and applicable case law, the Court is fully informed. For the reasons set forth below, the Court affirms the Commissioner's decision.

**I. Jurisdiction**

On July 3, 2018, Plaintiff filed application for Title II disability insurance benefits and for Title XVI application supplemental security income with the onset date of December 30, 2017. Plaintiff's application was denied initially and on

**ORDER AFFIRMING THE DECISION OF COMMISSIONER ~1**

1 reconsideration. Plaintiff timely requested a hearing.

2 On November 4, 2020, the ALJ determined that Plaintiff was capable of  
3 performing past relevant work as an agricultural produce sorter and found she was  
4 not disabled. On March 31, 2021, the Appeal Council reversed and remanded the  
5 case to the ALJ to (1) arrange for a qualified interpreter to assist Plaintiff and the  
6 ALJ at the hearing as instructed in HALLEX I-2-1-70A; (2) further evaluate  
7 Plaintiff's alleged symptoms; (3) give further consideration to whether Plaintiff has  
8 past relevant work, and if so, whether she can perform it; and (4) obtain evidence  
9 from the vocational expert to clarify the effect of the assessed limitations on  
10 Plaintiff's occupational base and determine whether the claimant has acquired any  
11 skills that are transferrable to other occupations.

12 On March 3, 2022, the ALJ held a telephonic supplemental remand hearing.  
13 Plaintiff appeared and testified before an ALJ, with the assistance of her counsel  
14 and a Spanish interpreter. Mark Harrington, vocational expert also participated. On  
15 March 18, 2022, the ALJ again found that Plaintiff was capable of performing past  
16 relevant work as an agricultural produce sort.

17 Plaintiff requested review by the Appeals Council and it denied the request  
18 on February 23, 2023. The Appeals Council's denial of review makes the ALJ's  
19 decision the "final decision" of the Commissioner of Social Security, which this  
20 Court is permitted to review. 42 U.S.C. §§ 405(g), 1383(c)(1)(3).

21 Plaintiff filed a timely appeal on April 26, 2023. ECF No. 1. The matter is  
22 before this Court pursuant to 42 U.S.C. § 405(g).

## 23 **II. Five-Step Sequential Evaluation Process**

24 The Social Security Act defines disability as the "inability to engage in any  
25 substantial gainful activity by reason of any medically determinable physical or  
26 mental impairment which can be expected to result in death or which has lasted or  
27 can be expected to last for a continuous period of not less than twelve months." 42  
28 U.S.C. § 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be under

1 a disability only if their impairments are of such severity that the claimant is not  
2 only unable to do their previous work, but cannot, considering claimant's age,  
3 education, and work experiences, engage in any other substantial gainful work that  
4 exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B). The  
5 Commissioner has established a five-step sequential evaluation process to  
6 determine whether a person is disabled in the statute. *See* 20 C.F.R.  
7 § 404.1520(a)(4)(i)–(v), 416.920(a)(4)(i)–(v).

8 **Step One:** Is the claimant engaged in substantial gainful activities? *Id.*  
9 § 404.1520(a)(4)(i), 416.920(a)(4)(i). Substantial gainful activity is work done for  
10 pay and requires compensation above the statutory minimum. *Keyes v. Sullivan*,  
11 894 F.2d 1053, 1057 (9th Cir. 1990). If the claimant is engaged in substantial  
12 activity, benefits are denied. *Id.* § 404.1520(b), 416.920(b). If the claimant is not,  
13 the ALJ proceeds to step two.

14 **Step Two:** Does the claimant have a medically-severe impairment or  
15 combination of impairments? *Id.* § 404.1520(a)(4)(ii), 416.920(a)(4)(ii). A severe  
16 impairment is one that lasted or must be expected to last for at least 12 months and  
17 must be proven through objective medical evidence. *Id.* §§ 404.1509, 416.909. If  
18 the claimant does not have a severe impairment or combination of impairments, the  
19 disability claim is denied. *Id.* §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the  
20 impairment is severe, the evaluation proceeds to the third step.

21 **Step Three:** Does the claimant's impairment meet or equal one of the listed  
22 impairments acknowledged by the Commissioner to be so severe as to preclude  
23 substantial gainful activity? *Id.* § 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the  
24 impairment meets or equals one of the listed impairments, the claimant is  
25 conclusively presumed to be disabled. *Id.* § 404.1520(d), 416.920(d). If the  
26 impairment is not one conclusively presumed to be disabling, the evaluation  
27 proceeds to the fourth step.

28 Before proceeding to the fourth step, the ALJ must first determine the

1 claimant's residual functional capacity (RFC). An individual's residual functional  
2 capacity is their ability to do physical and mental work activities on a sustained  
3 basis despite limitations from their impairments. *Id.* § 404.1545(a)(1),  
4 416.945(a)(1). The RFC is relevant to both the fourth and fifth steps of the  
5 analysis.

6 **Step Four:** Does the impairment prevent the claimant from performing work  
7 they have performed in the past? *Id.* § 404.1520(a)(4)(iv), 416.920(a)(4)(iv). If the  
8 claimant is able to perform their previous work, they are not disabled. *Id.*  
9 § 404.1520(f), 416.920(f). If the claimant cannot perform this work, the evaluation  
10 proceeds to the fifth and final step.

11 **Step Five:** Is the claimant able to perform other work in the national  
12 economy in view of their age, education, and work experience? *Id.*  
13 § 404.1520(a)(4)(v), 416.920(a)(4)(v). The initial burden of proof rests upon the  
14 claimant to establish a prima facie case of entitlement to disability benefits. *Tackett*  
15 *v. Apfel*, 108 F.3d 1094, 1098 (9th Cir. 1999). This burden is met once a claimant  
16 establishes that a physical or mental impairment prevents him from engaging in her  
17 previous occupation. *Id.* At step five, the burden shifts to the Commissioner to  
18 show that the claimant can perform other substantial gainful activity. *Id.*

### 19 **III. Standard of Review**

20 The Commissioner's determination will be set aside only when the ALJ's  
21 findings are based on legal error or are not supported by substantial evidence in the  
22 record as a whole. *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992) (citing  
23 42 U.S.C. § 405(g)). Substantial evidence is "more than a mere scintilla,"  
24 *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but "less than a preponderance,"  
25 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). Substantial  
26 evidence is "such relevant evidence as a reasonable mind might accept as adequate  
27 to support a conclusion." *Richardson*, 402 U.S. at 401.

28 A decision supported by substantial evidence will be set aside if the proper

1 legal standards were not applied in weighing the evidence and making the decision.  
2 *Browner v. Sec'y of Health & Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1988).  
3 An ALJ is allowed “inconsequential” errors as long as they are immaterial to the  
4 ultimate nondisability determination. *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d  
5 1050, 1055 (9th Cir. 2006). The court must uphold the ALJ’s denial of benefits if  
6 the evidence is susceptible to more than one rational interpretation, one of which  
7 supports the decision of the administrative law judge. *Batson v. Barnhart*, 359 F.3d  
8 1190, 1193 (9th Cir. 2004). It “must consider the entire record as a whole,  
9 weighing both the evidence that supports and the evidence that detracts from the  
10 Commissioner’s conclusion, and may not affirm simply by isolating a specific  
11 quantum of supporting evidence.” *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir.  
12 2017) (quotation omitted). “If the evidence can support either outcome, the court  
13 may not substitute its judgment for that of the ALJ.” *Matney*, 981 F.2d at 1019.

#### 14 **IV. Statement of Facts**

15 The facts have been presented in the administrative record, the ALJ’s  
16 decision, and the briefs to this Court. Only the most relevant facts are summarized  
17 here.

18 At the time of the 2022 hearing, Plaintiff was 60 years old. Plaintiff is not  
19 married and has two adult children. She graduated from high school in Mexico in  
20 1996 and then immigrated to the United States with her parents.

21 She injured her back at work in June 2014, after she lifted a heavy bag of  
22 garbage. She also experienced another injury in 2016 when she slipped while  
23 mopping.

24 She testified that she has chronic low back pain that radiates into both hips.  
25 She reports that she is unable to stand for prolonged periods of time, has difficulty  
26 with bending and lifting heavy objects. She has difficulty with lifting in her left  
27 shoulder, arm, and hand. She experiences migraine headaches 3-4 times a month.

28 She last worked in 2017 sorting potatoes. It appears that she attempted to

1 work in 2019 but was only able to continue for a couple of weeks.

2 **V. The ALJ's Findings**

3 The ALJ issued an opinion affirming denial of benefits. AR 33-49. At step  
4 one, the ALJ found that Plaintiff met the insured status requirements of the SSA  
5 through March 21, 2023, and had not engaged in substantial gainful activity since  
6 December 30, 2017, the alleged onset date. AR 35.

7 At step two, the ALJ identified the following severe impairments: mild  
8 osteoarthritis of the hips, mild lumbar degenerative disc disease, and a depressive  
9 disorder.

10 At step three, the ALJ found that Plaintiff did not have an impairment or  
11 combination of impairments that meets or medically equals the severity of one of  
12 the listed impairments. AR 37.

13 At step four, the ALJ concluded that Plaintiff has an RFC to perform:

14 a full range of light work as defined in 20 CFR 404.1567(b) and  
15 416.967(b) except: she can occasionally climb ladders, ropes, and  
16 scaffolds and frequently perform all other postural activities; she is  
17 limited to simple, routine tasks; and she needs a routine, predictable  
work environment with no more than occasional changes.

18 AR 39

19 At step five, the ALJ found that Plaintiff was capable of performing past  
20 relevant work as an agricultural produce sorter. Further, the ALJ found that this  
21 work does not require the performance of work-related activities precluded by  
22 Plaintiff's RFC. AR 46.

23 In the alternative, the ALJ found that even if Plaintiff's left shoulder  
24 impairment was determined to be severe, the outcome would be the same. AR 48.  
25 The ALJ found that even if the RFC was restricted as set forth in the prior  
26 administrative medical findings of Dr. Virji, the outcome would be the same  
27 because the VE found that when considering additional limitations for only  
28 occasional stooping and crouching and frequent reaching with the left upper

1 extremity, Plaintiff could still perform past relevant work. AR 48.

2 Consequently, the ALJ that Plaintiff was not disabled. AR 48-49.

### 3 **VI. Issues**

4 1. Whether the ALJ properly evaluated the medical opinion evidence.

5 2. Whether the ALJ properly evaluated Plaintiff's subjective  
6 complaints.

7 3. Whether the ALJ properly evaluated Plaintiff's past relevant work.

### 8 **VII. Discussion**

#### 9 **A. Evaluation of the Medical Opinions**

10 In evaluating medical opinion evidence, the ALJ considers the  
11 persuasiveness of each medical opinion and prior administrative medical finding  
12 from medical sources. 20 C.F.R. § 416.920c(a) and (b). The ALJ is required to  
13 consider multiple factors, including supportability, consistency, the source's  
14 relationship with the claimant, any specialization of the source, and other factors  
15 (such as the source's familiarity with other evidence in the file or an understanding  
16 of Social Security's disability program). 20 C.F.R. § 416.920c(c)(1)-(5).

17 Supportability and consistency of an opinion are the most important factors,  
18 and the ALJ must articulate how they considered those factors in determining the  
19 persuasiveness of each medical opinion or prior administrative medical finding. 20  
20 C.F.R. § 416.920c(b)(2). The ALJ may explain how they considered the other  
21 factors, but is not required to do so, except in cases where two or more opinions  
22 are equally well-supported and consistent with the record. *Id.*

23 Supportability and consistency are further explained in the regulations:

#### 24 (1) Supportability.

25 The more relevant the objective medical evidence and  
26 supporting explanations presented by a medical source are to support  
27 his or her medical opinion(s) or prior administrative medical  
28 finding(s), the more persuasive the medical opinions or prior  
administrative medical finding(s) will be.

#### (2) Consistency.



1           The more consistent a medical opinion(s) or prior  
2 administrative medical finding(s) is with the evidence from other  
3 medical sources and nonmedical sources in the claim, the more  
4 persuasive the medical opinion(s) or prior administrative medical  
5 finding(s) will be.

6 *Id.*

7           Plaintiff argues the ALJ improperly evaluated the medical opinion evidence  
8 of three providers: (1) Kandice Schultz, RN, FNP; (2) A. Peter Weir; and (3) K.  
9 Mansfield-Blair, PhD.

10 **1. Kandice Schultz, RN, FNP**

11           On October 27, 2021, Kandice Schulz provided a medical source statement  
12 indicating the following: (1) Plaintiff suffers pain in both shoulders radiating to the  
13 elbows and forearms, with associated numbness in her forearms and hands,  
14 resulting in the inability to perform her custodial work; (2) she exhibits limited  
15 range of motion in both shoulders; (3) attempting to work a 40-hour per week  
16 schedule would result in absenteeism due to increased pain in her arms with use,  
17 preventing her from performing her work duties; (4) she is severely limited and  
18 unable to meet the demands of even sedentary work; (5) she can never reach with  
19 her bilateral upper extremities; (6) she is limited to occasional handling and  
20 frequent fingering bilaterally; (7) she would be off task and unproductive over 30%  
21 of the time; and (8) her limitations have been present throughout the relevant  
22 period.

23           The ALJ rejected the opinion as a checkbox form with little explanation,  
24 referring to the limited treatment relationship. The ALJ relied on the  
25 inconsistencies within the opinion to find that the opinion was not supported by the  
26 record. The ALJ noted there was little foundation for the opinion and the opinion  
27 was inconsistent with the longitudinal record which indicated minimal evidence of  
28 left shoulder impingement and minimal complaints and treatment of the  
impairment. The ALJ also noted that as to the claimant's overall physical



1 functioning, the record shows objective findings of normal  
2 gait/ambulation/balance, strength, and sensory functioning; some evidence of  
3 malingering; some treatment non-compliance; and high-functioning activities of  
4 daily living. The ALJ properly considered the supportability and consistency of  
5 Ms. Schultz's opinion. Consequently, the ALJ's evaluation of Ms. Schultz's  
6 opinion was not in error.

7 **2. A. Peter Weir, MD**

8 On May 12, 2019, Dr. Weir completed a physical evaluation of Plaintiff,  
9 concluding she is restricted to a maximum of four hours a day standing and  
10 walking, and limiting her to occasional reaching, pushing, pulling, and working  
11 overhead with her left arm. Dr. Weir noted that Plaintiff had limited range of  
12 motion in her left shoulder and limited range of motion of her back, but also noted  
13 that she exhibited poor effort with the range of motion testing. He noted that  
14 Plaintiff's subjective complaints of pain were out of proportion to objective  
15 findings on examination.

16 The ALJ found that Dr. Weir's medical opinion was not supported by his  
17 physical examination, which appeared to be quite unremarkable. And given the  
18 lack of objective findings, it appears that Dr. Weir was overly reliant on Plaintiff's  
19 lack of effort in rendering his medical opinion. Finally, the ALJ noted that Dr.  
20 Weir's opinion was inconsistent with the record and not well-supported. The ALJ's  
21 evaluation of Dr. Weir's opinion is consistent with and supported by the record and  
22 is not in error.

23 **3. K. Mansfield-Blair, PhD.**

24 On May 19, 2019, Dr. Mansfield-Blair completed a psychological evaluation  
25 of Plaintiff. Dr. Mansfield-Blair concluded with the following findings:  
26 She would have difficulty performing work activities on a daily basis without  
27 special or added instruction, given her performance on memory tasks and despite  
28 an estimated level of intelligence in the Low Average to Borderline Intellectual

1 Functioning Range. Plaintiff would have difficulty maintaining regular attendance  
2 and completing a normal workday/work week without interruptions from a  
3 psychiatric condition, given a current lack of mental health treatment.

4 Dr. Mansfield-Blair found Plaintiff would not have difficulty performing  
5 simple and repetitive tasks but would have difficulty performing detailed and  
6 complex tasks.

7 Here, the ALJ properly evaluated Dr. Mansfield-Blair's opinion. The ALJ  
8 adopted those portions of the opinion that were supported by actual examination.  
9 The ALJ properly determined that Dr. Mansfield-Blair's opinion regarding  
10 attendance were not consistent with nor supported by the record. This was not in  
11 error.

#### 12 **B. Plaintiff's Subjective Complaints**

13 Plaintiff argues the ALJ erred in discounting Plaintiff's subjective  
14 symptoms.

15 In determining whether a claimant's testimony regarding subjective pain or  
16 symptoms is credible, the ALJ engages in a two-step analysis. *Garrison v. Colvin*,  
17 759 F.3d 995, 1014 (9th Cir. 2014). "First, the ALJ must determine whether the  
18 claimant has presented objective medical evidence of an underlying impairment  
19 which could reasonably be expected to produce the pain or other symptoms  
20 alleged." *Id.* (citation and quotation omitted). If the claimant satisfies the first step  
21 of the analysis, and there is no evidence of malingering, the ALJ can reject the  
22 claimant's testimony about the severity of their symptoms "only by offering  
23 specific, clear and convincing reasons for doing so." *Id.* (citation and quotation  
24 omitted). "This is not an easy requirement to meet: The clear and convincing  
25 standard is the most demanding required in Social Security cases." *Id.* (citation and  
26 quotation omitted). That said, if the ALJ's credibility finding is supported by  
27 substantial evidence in the record, the Court may not engage in second-guessing.  
28 *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002).

1 Here, the ALJ noted that the objective medical evidence was largely  
2 unremarkable as it related to Plaintiff's physical functioning. The ALJ found that  
3 her statements at the hearing that she was able to stand/walk for only 10 to 15  
4 minutes not consistent with the normal objective findings. The ALJ noted that  
5 Plaintiff sought no significant treatment for migraines, minimum treatment for his  
6 back and shoulder pain, that she declined mental health treatment and failed to  
7 engage in physical therapy. Moreover, the ALJ noted that three different medical  
8 sources observed evidence of malingering.

9 The ALJ articulate clear and convincing reasons for discounting Plaintiff's  
10 symptoms and credibility, and, thus, the ALJ's conclusions are supported by  
11 substantial evidence, based on the record as a whole.

### 12 C. Past Relevant Work

13 At step four, a claimant has the burden to prove that he cannot perform his  
14 past relevant work "either as actually performed or as generally performed in the  
15 national economy." *Lewis v. Barnhart*, 281 F.3d 1081, 1083 (9th Cir. 2002). ALJs  
16 may use either the "actually performed test" or the "generally performed test"  
17 when evaluating a claimant's ability to perform past work. *Id.*

18 Here, the ALJ correctly determine that Plaintiff could perform the job of  
19 agricultural sorter as that position is generally performed in the national economy.  
20 *See Stacy v. Colvin*, 825 F.3d 563, 569 (9th Cir. 2016).

### 21 VIII. Conclusion

22 The ALJ properly evaluated the medical opinion evidence and Plaintiff's  
23 testimony and properly found that Plaintiff could perform past relevant work as an  
24 agricultural sorter.

25 Accordingly, **IT IS HEREBY ORDERED:**

26 1. For docket purposes, Plaintiff's Opening Brief, ECF No. 9 and Reply  
27 Brief, ECF No. 12, are **DENIED**.

2. For docket purposes, the Commissioner's Response Brief, ECF No. 11, is **GRANTED**.

3. The decision of the Commissioner is **AFFIRMED**.

4. Judgment shall be entered in favor of Defendant and against Plaintiff.

**IT IS SO ORDERED.** The District Court Executive is hereby directed to file this Order, provide copies to counsel, and **close** the file.

**DATED** this 23rd day of October 2023.



*Stanley A. Bastian*

Stanley A. Bastian  
Chief United States District Judge